

On September 28, 2020, Petitioner filed the present motion to vacate contending, among other things, that his counsel was ineffective for failing to file a notice of appeal after Petitioner’s judgment was entered despite Petitioner’s express instruction that his counsel file an appeal. [Doc. 1]. Specifically, Petitioner avers that he told his attorney that he wanted to appeal immediately

after sentencing when Petitioner returned to his holding cell on August 27, 2018. [Doc. 1 at 4]. Petitioner also contends that he adamantly told his attorney in multiple phone conversations from Mecklenburg and Caldwell County Jails that he wanted to appeal his sentence. [Id.]. Finally, Petitioner claims that his attorney withdrew as counsel “the more [Petitioner] persisted he wanted to appeal his sentence.” [Id.]. In his claim for relief, Petitioner asks the Court to “[r]esentence him fairly without all the prosecutorial prejudice.” [Id. at 14].

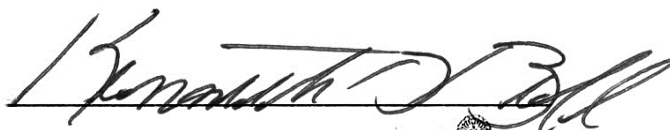
Before determining Petitioner’s motion, the Court will require the Government to obtain an affidavit from Petitioner’s counsel regarding the matter at issue in Petitioner’s motion to vacate and to file it with the Court. Namely, Petitioner’s counsel shall attest to everything he remembers regarding Petitioner requesting that counsel file a notice of appeal and any other facts or circumstances that may be relevant to the Court’s consideration of Petitioner’s motion to vacate on this issue.

The Court will hold a hearing, if necessary, to resolve any material discrepancy between Petitioner’s motion and counsel’s affidavit.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that the Government shall obtain and file an affidavit from Petitioner’s counsel of record in the underlying criminal proceedings in accordance with the terms of this Order within twenty-one (21) days of this Order.

Signed: May 24, 2021



Kenneth D. Bell  
United States District Judge

